(2)

Supreme Court, U.S.
FILED
MAR 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1348

In The

Supreme Court of the United States

January Term, 1986

George Hamm,

Petitioner,

vs.

DeKalb County, Georgia
Pat Jarvis, Sheriff,

Respondents.

Response in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

Albert Sidney Johnson
County Attorney

Gail C. Flake
Chief Staff Attorney

Office of the County Attorney
One West Court Square
Suite 210
Decatur, Georgia 30030
(404) 378-7543

Attorneys for Respondents

23pp

No. 85-1348

In The

Supreme Court of the United States

January Term, 1986

George Hamm,

Petitioner,

vs.

DeKalb County, Georgia
Pat Jarvis, Sheriff,

Respondents.

Response in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

Albert Sidney Johnson
County Attorney

Gail C. Flake
Chief Staff Attorney

Office of the County Attorney
One West Court Square
Suite 210
Decatur, Georgia 30030
(404) 378-7543

Attorneys for Respondents

TABLE OF CONTENTS

STATEMENT OF CASE.....1-6

SUMMARY OF ARGUMENT.....7-8

REASONS FOR DENYING WRIT OF CERTIORARI.....9-16

CONCLUSION.....16-17

CERTIFICATE OF SERVICE.....18

TABLE OF AUTHORITIES

Bell v. Wolfish, 441 U.S. 520, 537, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).....11

City of Revere v. Massachusetts General Hosp., ____ U.S. ____, 103 S.Ct. 2979 (1983).....11

Daniels v. Williams, ___ U.S. ___ 106 S.Ct. 662 (1986).....12

Davidson v. Cannon, ___ U.S. ___, 106 S.Ct. 668 (1986).....12

Hamm v. DeKalb County, 774 F.2d 1567, 1576 (11th Cir. 1985).....6, 9, 10, 14

Hoitt v. Vitek, 497 F.2d 598, 601 (1st Cir. 1974).....14

Jones v. Diamond, 636 F.2d 1364, 1378 (5th Cir.) (en banc) cert. granted, 452 U.S. 959, 101 S.Ct. 3106, 69 L.Ed.2d 970, cert. dismissed, 453 U.S. 950, 101 S.Ct. 27, 69 L.Ed.2d 1033 (1981).....15

Layne v. Vinzant, 657 F.2d. 468, 474 (1st Cir. 1981).....14

Monroe v. Pape, 365 U.S. 167, 172, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).....13

Rhodes v. Chapman, 452 U.S. 337,
101 S.Ct. 2392, 69 L.Ed.2d 59
(1981).....15-16

Ruiz v. Estelle, 679 F.2d 1115
(5th Cir. 1982), cert. denied,
460 U.S. 1042, 103 S.Ct. 1438,
75 L.Ed.2d 795 (1983).....13

Smith v. Sullivan, 553 F.2d 373,
380 (5th Cir. 1977).....15

Westlake v. Lucas, 537 F.2d. 857,
860 n.5 (1st Cir. 1981).....14

No. 85-1348

In The

Supreme Court of the United States

January Term, 1986

George Hamm,

Petitioner,

vs.

DeKalb County, Georgia
Pat Jarvis, Sheriff,

Respondents.

Response in Opposition to
Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

STATEMENT OF CASE

The procedural history preceding this petition for writ of certiorari has been detailed in petitioner Hamm's statement of the case. Petitioner Hamm was confined in the DeKalb County Jail on

several occasions from 1979 through 1982. The pertinent periods of incarceration in this appeal ran from February 11, 1980 to April 14, 1980 and from September 23, 1980 to May 20, 1981, which included time both before and after Hamm's criminal conviction. Hamm, who is presently confined in a state prison facility, brought suit under §1983 against the sheriff and the county, contending his constitutional rights under the Eighth and Fourteenth Amendments were violated during the time he was confined in the county jail, as a result of medical care, diet, and shelter conditions.

Following a hearing in the district court, that court entered findings that, because the county jail population had exceeded its design capacity at times during periods of Hamm's confinement, he

had been required to sleep on a mattress, either on the floor or on a table. However, the district court expressly found that Hamm did not suffer any special physical injury or illness as a result of these overcrowded conditions.

Regarding food service, the district court found:

> [T]he jail served three meals a day, consisting of a total of 2,600 calories. While plaintiff occasionally found foreign matter in his food and while the jail's food preparation and storage often failed to meet Georgia Department of Human Resources Food Preparation Standards, plaintiff did not become seriously ill as a consequence of the jail's food service practices.
>
> Hamm v. DeKalb County, Civil Action No. C81-1415A (N.D. Ga., July 31, 1984)

The evidence before the district court revealed that the county jail was staffed around-the-clock by a registered nurse, and that a physician held sick call at the jail on a minimum of four

days per week. In addition, a psychiatrist visited the jail once a week. Hamm's jail medical records indicated that he regularly visited the jail infirmary, complaining of various matters ranging from the "hearing of voices" to a toothache. On the majority of his visits, Hamm was treated by a registered nurse; however, the records indicated that, on occasion, he was also examined by the jail physician.

After considering the evidence concerning the medical services available at the jail in general, and Hamm's treatment in particular, the district court concluded that the records revealed:

> ...a pattern of examinations and treatments provided to an inmate [Hamm] who presented the staff at the DeKalb County jail with numerous, often vague, complaints regarding his health. It is clear that the plaintiff was not always given the course of treatment (for example, hospitalization) he deemed appropriate.... It is equally clear

> that he often refused medication prescribed for him.... Finally, the conclusion can be drawn that the various treatment modalities selected for the plaintiff met with mixed results." Hamm v. DeKalb County, Civil Action No. C81-1415A (N.D. Ga., July 31, 1984)

Based upon its review of the evidence, the district court concluded the conditions at the county jail neither seriously aggravated Hamm's physical or mental problems, nor caused him to suffer any special physical injury or illness. The court found Hamm had not been deprived of his constitutional rights and, consequently, entered judgment in favor of the respondents.

In affirming the district court's decision, the Eleventh Circuit Court of Appeals noted that, while the district court had not expressly considered Hamm's medical treatment claims in combination with his other claims, as would be consistent with a "totality of

conditions" approach, the evidence was clear that the totality of such jail conditions "did not fall below constitutional standards." Hamm v. DeKalb County, 774 F.2d 1567, 1576 (11th Cir. 1985).

SUMMARY OF ARGUMENT

The Eleventh Circuit correctly held that the minimum standards for the provision of such basic necessities as food, shelter, and medical care to county jail inmates are the same under both the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment, and that petitioner Hamm failed to show a violation of his constitutional rights. There is no public policy or other basis which would justify affording pre-trial detainees a higher standard of care, in the provision of food, shelter, and medical care, than is provided to convicted persons. To the contrary, since "life and health are just as precious to convicted persons as to pre-trial detainees", public policy and humanitarian concerns demand that all prisoners be entitled to a reasonably

adequate diet and living space, as well as protection against deliberate indifference to their serious medical needs.

Petitioner has not only failed to show the existence of egregious conditions of confinement, but also did not prove any personal injury or damage resulting from the conditions of which he complained. The Eleventh Circuit correctly reviewed the evidence in light of the "totality of conditions" test, and found petitioner's claims legally insufficient under §1983.

REASONS FOR DENYING WRIT OF CERTIORARI

A. The Eleventh Circuit correctly held that, in regard to the provision of such basic necessities as food, living space, and medical care, the minimum standards are the same under the due process clause and the Eighth Amendment.

The Eleventh Circuit Court of Appeals, while recognizing the limitations imposed by the Eighth Amendment and the Due Process Clause arise in different contexts, found the two provisions to necessarily yield the same result with respect to the provision of such basic necessities as food, shelter, and medical care. Hamm v. DeKalb County, supra, at 1574. This conclusion was premised upon a recognition that:

> Distinguishing the Eighth Amendment and due process standards in this area would require courts to evaluate the details of slight differences in conditions. Many city and county jails have convicted prisoners and pre-trial detainees. That approach

> would result in the courts' becoming 'enmeshed in the minutiae of prison operations', a situation against which the Supreme Court has warned. Therefore, the level at which states provide pre-trial detainees with basic necessities - in addition to being 'reasonably related to a legitimate governmental objective' - must meet the standards supplied under the eighth amendment prohibition on cruel and unusual punishment, i.e., they must furnish the detainees with a reasonably adequate diet and living space, and with reference to medical needs, they must not be deliberately indifferent to detainees' serious medical needs. Life and health are just as precious to convicted persons as to pre-trial detainees.
> Hamm v. DeKalb County, supra, at 1574

The Eleventh Circuit's analysis is consistent with the decisions of this Court regarding the proper standards to be applied under the Fourteenth Amendment. While a pre-trial detainee may not be subject to conditions amounting to punishment:

> Not every disability imposed during pre-trial detention amounts to 'punishment' in the constitutional sense....And the fact that such detention interferes with the

> detainees' understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into 'punishment'."
>
> Bell v. Wolfish, 441 U.S. 520, 537, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

In City of Revere v. Massachusetts General Hosp., ____ U.S. ____, 103 S.Ct. 2979 (1983), this Court considered whether the due process rights of an individual who had been injured while being apprehended by the police had been adequately protected. While declining to precisely define the state's due process obligations to pre-trial detainees requiring medical care, this Court held such obligation to be "at least as great as the Eighth Amendment protections available to a convicted prisoner." Supra, at 103 S.Ct. at 2983.

More recently, in considering whether an inmate's due process rights under the

Fourteenth Amendment were violated when prison officials failed to protect him from another inmate, this Court held "the protections of the Due Process Clause, whether procedural or substantive, are just not triggered by lack of due care by prison officials" and therefore found the inmate's claim did not approach that sort of abusive governmental conduct that the due process clause is designed to prevent. Davidson v. Cannon, ____ U.S. ____, 106 S.Ct. 668 (1986); see also Daniels v. Williams, ____ U.S. ____, 106 S.Ct. 662 (1986).

Hamm's claims that his food occasionally contained foreign objects, that he was required to sleep on a mattress on the floor or a table during periods of jail overcrowding, and that he did not obtain what he considered to be appropriate treatment or medication for

his disorders, do not rise to the level of a constitutional violation. There has been no showing of an abuse of governmental power here, and such a showing is an essential element under §1983. Monroe v. Pape, 365 U.S. 167, 172, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

B. There is no conflict between the totality of conditions analysis applied by the Eleventh Circuit Court of Appeals and the decisions of the Fifth Circuit Court of Appeals.

Petitioner Hamm complains that the Eleventh Circuit failed to apply the "totality of conditions" test espoused in Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982), cert. denied, 460 U.S. 1042, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983). Respondents are unclear as to petitioner's basis for contending the Eleventh Circuit failed to apply this test, as that Court expressly found that

"it is clear from the district court's finding on the individual claims that the conditions - in combination - did not fall below constitutional standards." Hamm v. DeKalb County, supra, at 1575-1576.

Where a state prisoner has received medical attention, but disputes the adequacy of the treatment, federal courts should be reluctant to "second guess" medical judgment and, thus, constitutionalize claims that sound in tort law. Layne v. Vinzant, 657 F.2d. 468, 474 (1st Cir. 1981); Westlake v. Lucas, 537 F.2d. 857, 860 n.5 (1st Cir. 1981). Because food may occasionally be served cold or contain foreign objects, while unpleasant, does not amount to a constitutional deprivation. Hoitt v. Vitek, 497 F.2d 598, 601 (1st Cir. 1974). The Constitution requires that

prisoners be provided "reasonably adequate food", consisting of a well-balanced meal, containing sufficient nutritional value to preserve health..." Jones v. Diamond, 636 F.2d 1364, 1378 (5th Cir.) (en banc) cert. granted, 452 U.S. 959, 101 S.Ct. 3106, 69 L.Ed.2d 970, cert. dismissed, 453 U.S. 950, 101 S.Ct. 27, 69 L.Ed.2d 1033 (1981); Smith v. Sullivan, 553 F.2d 373, 380 (5th Cir. 1977).

The district court and Court of Appeals properly found Hamm's claims concerning sleeping arrangements and overcrowding to be insufficient. In reviewing claims of unconstitutionally overcrowded jails, courts must consider the impact of such alleged overcrowded condition on the facilities' ability to provide basic necessities, such as food, medical care, and sanitation. See Rhodes

v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). The fact that overcrowded conditions at the jail caused Hamm to have to temporarily sleep upon a mattress on the floor or on a table does not create a constitutional violation where there has been no showing that such conditions were imposed arbitrarily or resulted in harm or injury to him.

Whether considered separately or in combination, petitioner Hamm has simply failed to prove a violation of his rights under either the Eighth or Fourteenth amendments to the United States Constitution.

CONCLUSION

There are no special or important issues here deserving review by this Court. The District Court and Eleventh Circuit Court of Appeals correctly found petitioner Hamm's claims to be

insufficient under §1983. Respondents thus respectfully urge the Court to deny the petition for writ of certiorari presently pending on behalf of George Hamm.

Respectfully submitted,

Albert Sidney Johnson
County Attorney

Gail C. Flake
Chief Staff Attorney

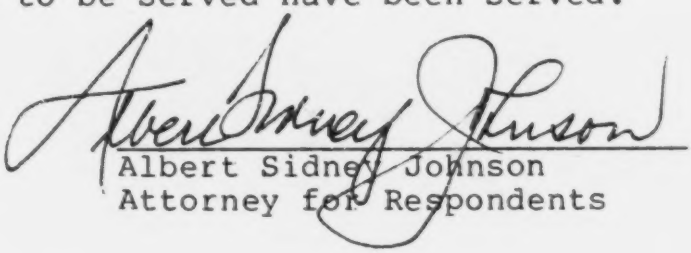
Attorneys for Respondents
Suite 210
One West Court Square
Decatur, Georgia 30030
(404) 378-7543

CERTIFICATE OF SERVICE

As a member of the Bar of the United States Supreme Court, I hereby certify that on the 10th day of March, 1986, three copies of the enclosed Response in Opposition to Petition for Writ of Certiorari were mailed first class, postage prepaid, to:

Stephen E. O'Day
Hurt, Richardson, Garner, Todd
& Cadenhead
1100 Peachtree Center Harris Tower
233 Peachtree Street, N.E.
Atlanta, Georgia 30043

I further certify that all parties required to be served have been served.



Albert Sidney Johnson
Attorney for Respondents